

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

<b>In the Matter of</b>	)	
	)	
<b>American Teleservices Association, Inc.</b>	)	<b>CG Docket No. 02-278</b>
<b>Petition for Declaratory Ruling on</b>	)	
<b>Preemption of New Jersey</b>	)	
<b>Telemarketing Rules</b>	)	

**Comments of Mutual of Omaha Insurance Company**

Pursuant to §§ 1.415 and 1.419 of the Commission’s Rules, Mutual of Omaha Insurance Company (“Mutual of Omaha”) submits the following comments in support of the American Teleservices Association, Inc.’s (“ATA”) Petition for Declaratory Ruling to preempt certain provisions of the New Jersey Consumer Fraud Act (N.J. Stat. Ann. §56:8-119, et. seq. (West 2003)) and the New Jersey Administrative Code (N.J. Admin. Code Title 13, §45D (2004)), herein collectively referred to as the “New Jersey Rules”. \*

Mutual of Omaha is a national insurance carrier, licensed to sell life, Medicare Supplement, long term care and disability insurance in all 50 States and Puerto Rico. To service our existing customers (which number in the millions) and to reach potential new customers, Mutual of Omaha relies, in part, on telemarketing activities. Accordingly, Mutual of Omaha has a significant interest in the Commission’s and the states’ rules regarding telemarketing.

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\* In addition to serving on the ATA’s Board of Directors, Mutual of Omaha is a member of the American Council of Life Insurers (ACLI). Mutual of Omaha supports the comments the ACLI submitted to the Commission in this matter.

## **Summary**

The ATA Petition identifies several areas in which the New Jersey Rules are more restrictive than, and conflict with, the Commission's Rules under the Telephone Consumer Protection Act of 1991 (the "Commission's Rules"), including but not limited to the following:

- The New Jersey Rules fail to include a number of the critical components of the exemption provided under the Commission's Rules for telephone solicitations to consumers with whom the caller has an established business relationship ("EBR").
- Contrary to the Commission's Rules, the New Jersey Rules also fail to provide an exemption for telemarketing calls to consumers with whom the caller has a personal relationship.

In revising its rules to establish a national do-not-call registry for consumers who desire to avoid unwanted telemarketing calls, the Commission stated that any more restrictive state rule "almost certainly would be preempted." To the extent the New Jersey Rules are more restrictive than the Commission's Rules with respect to interstate telemarketing, the Commission should preempt the same.

## **Discussion**

### ***Established Business Relationship***

The Commission's Rules generally prohibit telemarketing calls to individuals who have registered their residential telephone numbers on the national do-not-call registry ("subscribers"). An exception to this general rule includes calls to individuals with whom the caller has an established business relationship (EBR). The New Jersey Rules depart in material respects from the Commission's EBR exemption. Specifically, the New Jersey Rules fail to exempt calls to a subscriber on the basis of the subscriber's (a) purchase or transaction (that is not credit-related) with the caller within the eighteen (18) months immediately preceding the date of the telephone

call, or (b) inquiry or application regarding products or services offered by the caller within the three (3) months immediately preceding the date of the telephone call. These omissions likely will have negative effects on an insurer's ability to offer its existing customers comprehensive insurance coverage and to communicate with consumers, particularly those with whom the insurer has a prior or existing business relationship, in the most efficient way (the telephone). It is the consumer who will suffer under this scenario (e.g., financial representatives will not be apprised as quickly of changes in the consumer's personal circumstances that may affect his or her financial needs; insurers will lose an effective and timely method to provide consumers information or recommendations about enhancements to their existing policies or new insurance products that would be beneficial or of interest to them).

### ***Personal Relationship***

The New Jersey Rules also fail to provide an exemption for calls made to consumers with whom the caller has a personal relationship. An insurance agent's business is more often than not built on personal contacts. This prohibition by omission ignores the unique nature of the insurer-insured relationship and is in direct contravention of the Commission's Rules.

### ***Value of Preemption***

Insofar as they are inconsistent with the Commission's Rules, the New Jersey Rules frustrate the federal objective of creating uniform national rules. Consequences of this indifference include increased compliance efforts and costs, not to mention confusion among the consumers and the parties who desire to comply with all applicable requirements. The Commission should preempt the New Jersey Rules to the extent they are more restrictive than the Commission's Rules.

## **Conclusion**

For the foregoing reasons, Mutual of Omaha supports the ATA's Petition and respectfully urges the Commission to preempt the New Jersey Rules applicable to interstate telemarketing calls that are more restrictive than, and conflict with, the Commission's Rules under the Telephone Consumer Protection Act. Failure to do so will, at best, disregard the unique insurer-insured relationship recognized by the exemptions provided under the Commission's Rules, and, at worst, frustrate the federal objective of creating uniform national rules -- all to the consumers' detriment.

Respectfully Submitted,



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